



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

June 25, 1996

RE: Wiltron Company Assessment Appeal

Dear Mr. _____

In your letter of April 23, 1996 you asked our opinion on the interpretation of the phrase "then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board" as found in the fourth paragraph of California Revenue and Taxation Code, Section 469. More specifically the issue can be stated: Does **all property of the assessee** include the parcel of real property whereupon the audited property is located, if it is used but leased from, owned and assessed to a third party?

Our response is, there is no right for a non-assessee to appeal under these circumstances within the literal meaning of the statute. However, when the intent of the Legislature in the enactment of Section 469 is construed with the authority of the county board under Property Tax Rule 324(b), we are of the view that equalization of such parcel is a factual question for the consideration of the board when raised by the assessee or when recognized by the Board itself.

Wiltron leases four parcels of real property in the Morgan Hill Business Park. The assessor reports that two of these are unimproved land only. Of the two remaining parcels at 450 and 490 Jarvis only the latter is the location of APN 727-12-049 which consists of the personal property that was subject to audit for 1991, 1992 and 1993. Since the results of the audit found

that personal property escaped assessment in the years in question and the assessor proceeded to process the escape, Wiltron timely filed an appeal under Section 469 on all of the Morgan Hill parcels on the ground that they are triple-net leased from an owning parent and that their location in the business park is within the meaning of that term as used in the statute. We disagree.

The purpose of the fourth paragraph of Section 469 was to prevent an over-allocation of assessed value. In some circumstances original assessments were being imprecisely allocated to land, improvements and personal property. It was the intent of the Legislature in the enactment of this section to provide for escape assessment by audit but also to provide a shield for the assessee in case an over-allocation of the original assessment subsequently made it appear that one portion of the assessment was undervalued. By permitting the assessee to appeal all of the property at the location, the Legislature gave the county board the power of oversight to ensure that the entire assessment was correctly allocated and equalized.

Similarly, the statutory reference to the location of the profession, trade, or business is intended to designate the exact parcel whereupon the business exists. We would view other parcels within the business park as being in the vicinity but not at the location of the business. There is no valid appraisal reason that would link APN 727-12-049 to the two unimproved parcels or the parcel at 450 Jarvis. However, since the business personal property is physically located on the 490 Jarvis parcel, there is the distinct possibility that in actual operation the personal property and the real property have an interrelated business purpose. In current terminology these properties may comprise an appraisal unit, and if they do, they should not normally be subject to separate valuations. The appraisal unit concept goes hand in hand with the allocation process, and together they evidence the intent of the Legislature in the wording of Section 469.

The first paragraph of Property Tax Rule 324(b) makes clear that in a situation of this type the jurisdiction of the county board is not limited by the contentions of the parties, i.e., the board may act on its own motion. The third paragraph supplies the definition of an appraisal unit that would control the relationship between the personalty (APN 727-12-049) and the real property at 490 Jarvis. The middle paragraph, although expressed in the rule as a sword favoring the assessor, clearly applies when the assessee is seeking a shield in the entire unit against an assessor who is levying an escape on only a portion of the property.

Mr.

-3-

June 25, 1996

So in conclusion, it is our view that the county board should entertain, as a question of fact, your contention that the escaped personal property must be valued in conjunction with the real property at 490 Jarvis. If board members are convinced that a true appraisal unit exists, then it would be appropriate for them to hear evidence on the valuation of the underlying real property.

Yours very truly,

JMW:sao

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